

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION

EDUCATION MANAGEMENT
SERVICES, LLC,

Plaintiff,

v.

MICHAEL J. TRACEY,

Defendant.

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CIVIL ACTION NO. 5:15-cv-00075

[Removed from the 288th Judicial District
Court of Bexar County, Texas]

JURY DEMAND

NOTICE OF REMOVAL

COMES NOW Defendant, Michael J. Tracey (“Tracey” or “Defendant”), and hereby removes the action numbered Cause No. 2015-CI-00706 filed by Plaintiff, Education Management Services, LLC (“Plaintiff”), against Defendant in the 288th Judicial District of Bexar County, Texas, to the United States District Court for the Western District of Texas, San Antonio Division, under 28 U.S.C. § 1332 for the reasons explained below.

I.
STATEMENT OF THE CASE

On January 16, 2015, Plaintiff filed a lawsuit in the 288th Judicial District Court of Bexar County, Texas, styled *Education Management Services, LLC v. Michael J. Tracey*; Cause No. 2015-CI-00706, (“State Court Action”). Defendant was served with the State Court Action on January 21, 2015. In its Petition, Plaintiff asserts the following claims: (1) breach of contracts; and (2) statutory trade secret misappropriation. Plaintiff seeks injunctive relief and actual and punitive damages, attorneys’ fees, and additional remedies.

II.
BASIS FOR REMOVAL: DIVERSITY JURISDICTION

The Court may exercise diversity jurisdiction under 28 U.S.C. § 1332(a) because the parties are completely diverse, and the amount in controversy exceeds \$75,000. Diversity jurisdiction exists if there is “complete diversity between all named plaintiffs and all named defendants, and no defendant is a citizen of the forum State.” *Lincoln Prop. Co. v. Roche*, 126 S.Ct. 606, 610 (2005). The amount in controversy must also exceed \$75,000. 28 U.S.C. § 1332(a).

A. The Parties Are Citizens of Different States.

Here, the parties are diverse. According to the State Court Action, Plaintiff is a Delaware limited liability company authorized to do business in Texas, with its principal place of business in San Antonio, Bexar County, Texas. Accordingly, Plaintiff is a citizen of the States of Delaware or Texas. *See Preston v. Tenet Healthsystem Mem’l Med. Ctr.*, 485 F.3d 793, 797–98 (5th Cir. 2007). The Plaintiff is an LLC. In checking records on file in the State of Florida, no member of Plaintiff is a Florida resident.

Defendant, Michael Tracey, an individual, is a citizen of the State of Florida, and resides at 1117 S.E. 21st Street, Cape Coral, Florida 33990. (*See* Declaration of Michael J. Tracey attached as Exhibit 1). Tracey lives in Florida, but works with The Nick Vertucci Companies, Inc., which is based in Orange County, California, and is a Nevada Corporation.

B. The Amount in Controversy Exceeds \$75,000.

Plaintiff alleges violations of a Contractor Agreement by Tracey. Plaintiff alleges violations of the non-solicitation and non-circumvention provisions of the Contractor Agreement

with Plaintiff's businesses. Plaintiff also alleges that Defendant violated the terms of his Agreement by misappropriating confidential company information of Plaintiff.

Plaintiff asserts claims for breach of contract, conversion and trade secret misappropriation and alleges damages and appears to be seeking exemplary damages under TEX. CIV. PRAC. & REM. CODE §41.003(a). Specifically, Plaintiff seeks: actual and punitive damages; costs of suit; attorney's fees; prejudgment and post-judgment interest; an accounting; and disgorgement of profits.

The face of Plaintiff's Petition (Appx. Tab 2, p. 2, ¶5), states that "The damages sought are within the jurisdictional limits of this Court, as Plaintiff seeks monetary relief over \$200,000, but not more than \$1,000,000 an non-monetary relief."

Based on these allegations, as best as Defendant can reasonably discern, the claims asserted in the Original Petition exceed \$75,000 in value. As Defendant may rely on an estimation of damages calculated from the allegations in the Original Petition. *See SWS Erectors, Inc. v. Infax, Inc.*, 72 F.3d 489, 492 (5th Cir. 1996); *see also Smith v. American Gen. Life and Acc. Ins., Co.*, 337 F.3d 888, 892 (7th Cir. 2003). The amount in controversy exceeds the jurisdiction threshold under 28 U.S.C. 1332(a).

III.

NO CONCESSION TO VENUE

Defendant denies that venue is proper in Bexar County, Texas, and reserves the right to contest venue.

IV.
THE PROCEDURAL REQUIREMENTS HAVE BEEN SATISFIED

Removal of this action is timely under 28 U.S.C. § 1446(b). Service has not been perfected on Defendant. Defendant reserves all rights to raise service and jurisdictional defenses in this Court. Notice has been sent to the state court regarding the removal of this action.

All documents required by 28 U.S.C. § 1446(a) are attached hereto, all adverse parties have been given notice, and a copy of the Notice of Removal will promptly be filed with the clerk of the state district court in which the suit is pending, as required by 28 U.S.C. § 1446(d).

V.
JURY DEMAND

Pursuant to FED. R. CIV. P. 38, Defendant demands a trial by jury.

VI.
CONCLUSION

The Court may exercise diversity jurisdiction over this action. The Parties are diverse and based on Plaintiff's requests for direct claims and damages asserted and the injunctive relief sought, the amount in controversy exceeds \$75,000.

Respectfully submitted,

/s/ Clint A. Corrie

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ATTORNEYS FOR DEFENDANT
MICHAEL J. TRACEY

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document has been served electronically via the Court's Electronic Case Filing (ECF) System, or via U.S. Mail, first class, postage prepaid, facsimile or hand delivery in accordance with the FEDERAL RULES OF CIVIL PROCEDURE on the following counsel of record on the 29th day of January, 2015:

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/s/ Clint A. Corrie

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